

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER R. DESMOND,	§
	§ No. 151, 2012
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 91009844DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 22, 2012

Decided: August 9, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

**ORDER**

This 9<sup>th</sup> day of August 2012, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Christopher R. Desmond, filed an appeal from the Superior Court's denial of his eighth motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, in November 1992, Desmond was found guilty by a Superior Court jury of 10 counts of Robbery in the First Degree, 2 counts of Conspiracy in the Second Degree, 10 counts of Possession of a Deadly Weapon During the Commission of a Felony, 3

counts of Possession of a Deadly Weapon By a Person Prohibited, 3 counts of Theft and 1 count of Escape in the Third Degree. He was sentenced to a total of 78 years and 1 month of Level V incarceration. Desmond's convictions were affirmed by this Court on direct appeal.<sup>1</sup> Desmond has filed numerous unsuccessful postconviction petitions and motions in the Superior Court and the Federal District Court since that time. Every appeal filed in this Court also has been unsuccessful.

(3) In his postconviction motion in the Superior Court, Desmond claimed that Rule 61(i) (4)'s "interest of justice" exception applies to his case because there is evidence that a police informant who resembled him was the actual perpetrator of the crimes of which he was convicted. In his appeal, Desmond claims that he has suffered a "miscarriage of justice" and, therefore, is entitled to relief under Rule 61(i) (5).

(4) Under Delaware law, the Superior Court is required to determine whether the procedural requirements of Rule 61 have been met prior to addressing the substantive merits of claims made in a postconviction motion.<sup>2</sup> While Desmond's current motion is untimely<sup>3</sup> and procedurally

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<sup>1</sup> *Desmond v. State*, 654 A.2d 821 (Del. 1994).

<sup>2</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>3</sup> Super. Ct. Crim. R. 61(i) (1).

barred,<sup>4</sup> it nevertheless may be considered if he demonstrates the existence of a colorable claim of a miscarriage of justice due to a constitutional violation that undermined the legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction.<sup>5</sup>

(5) Desmond has failed to demonstrate a colorable claim of a miscarriage of justice. The record advanced by Desmond in support of his claim, consisting of several pages of trial transcript, simply does not support his claim of a miscarriage of justice due to a misidentification of the perpetrator of the crimes. Over the course of many years since his conviction, eight motions for postconviction relief and numerous other filings, Desmond has failed to demonstrate that his trial was tainted in any respect. We, therefore, conclude that the judgment of the Superior Court must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>4</sup> Super. Ct. Crim. R. 61(i) (2) and (3).

<sup>5</sup> Super. Ct. Crim. R. 61(i) (5).